

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK**

**LEA REICH**, on behalf of herself and  
all others similarly situated,

**Plaintiff,**

**v.**

**MIDLAND CREDIT MANAGEMENT, INC.,  
MIDLAND FUNDING, LLC and  
ENCORE CAPITAL GROUP, INC.,**

**Defendants.**

**Civil Action No.:  
1:15-cv-07195-JG-RML**

**AFFIDAVIT OF MICHAEL BURGER IN SUPPORT OF MIDLAND'S  
MOTION TO COMPEL ARBITRATION**

I, Michael Burger, declare pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, as follows:

1. I, the below-signed Affiant, am an adult citizen of the United States of America over 18 years of age and I am competent to testify regarding the matters in this affidavit.

2. I currently hold the position of Director, Legal Collections Operations, Midland Credit Management, Inc. ("MCM"). In my capacity as Director, Legal Collections Operations, for MCM, I am responsible for, among other things, maintaining and overseeing "media," e.g., the loan agreements, debt collection records and other account information pertaining to accounts and debt that MCM manages for Midland Funding, LLC ("MF") and am familiar with MF's purchase of accounts and related information.

3. MF was assigned Plaintiff's debt from Synchrony Bank, formerly known as GE Capital Retail Bank ("Synchrony"), and MCM serviced Plaintiff's debt for MF. Records related to the Plaintiff's debt were made at or near the times of occurrence of the matters set forth by, or from information transmitted by, a person having knowledge of those matters reflected in such records. These records are kept in the course of business activity conducted by MCM. It is the regular practice of MCM to make these records as part of its business activity. I make this statement from my own personal knowledge of the matters set forth herein, or based upon my review of the business records of MCM. If called as a witness, I could and would testify competently to the matters set forth in this affidavit.

4. MCM and MF are wholly owned subsidiaries of Encore Capital Group, Inc., all of which have principal places of business in San Diego, California.

5. In my capacity as Director, Legal Collections Operations, I have familiarity with, and first-hand knowledge of, the contents of various business records that MF obtained from Synchrony, including the account history and records of Synchrony related to the Banana Republic/Gap VISA credit card account with the last four digits 8020 ("the Account") in the name of Lea Reich.

6. On or about November 26, 2014, MF purchased Lea Reich's charged-off debt from Synchrony as part of a portfolio of charged-off Synchrony debts.

7. Attached hereto as Exhibit 1 is a true and correct copy of the bill of sale pertaining to Synchrony's sale of the portfolio containing the Account to MF. Attached hereto as Exhibit 2 is a true and correct copy of the affidavit of sale of account by original creditor, further evidencing the sale of these charged-off debts to MF.

8. The information pertaining to this portfolio of charged-off debts was transferred to MF in a computerized form through a media file containing the information applicable to each of the charged-off debts.

9. Attached as Exhibit 3 is a printed copy of the information in the media file identifying Lea Reich's debt as one of the purchased debts within the portfolio.

10. Records that MCM obtained from Synchrony indicate that on or about May 14, 2013, Lea Reich made her last purchase using the credit card related to the Account. See Exhibit 3.

11. Records that MCM obtained from Synchrony indicate that on or about July 4, 2013, Lea Reich made her final payment on the Account. See Exhibit 4.

12. Records that MCM obtained from Synchrony indicate that the Account was charged off on or about January 26, 2013, with an outstanding balance of \$8,007.82. See Exhibit 5.



Michael Burger  
Director, Legal Collections Operations  
Midland Credit Management, Inc.

Dated: 5/18/16

# **Exhibit 1**



## BILL of SALE

### Midland – PLCC 120 MP– November 2014

For value received and in further consideration of the mutual covenants and conditions set forth in the [Redacted] Receivables Purchase Agreement (the “Agreement”), dated as of this 16<sup>th</sup> day of July, 2014 by and between Synchrony Bank formerly known as GE Capital Retail Bank (“Seller”), and Midland Funding LLC (“Buyer”), Seller hereby transfers, sells, conveys, grants, and delivers to Buyer, its successors and assigns, without recourse except as set forth in the Agreement, to the extent of its ownership, the Receivables as set forth in the Notification Files (as defined in the Agreement), delivered by Seller to Buyer on November 21, 2014, and as further described in the Agreement.

Synchrony Bank

By: Ken Wojcik

Ken Wojcik

Title: SVP Collections & Recovery

# **Exhibit 2**

AFFIDAVIT OF SALE  
OF ACCOUNT  
BY ORIGINAL CREDITOR

State of Minnesota County of Ramsey

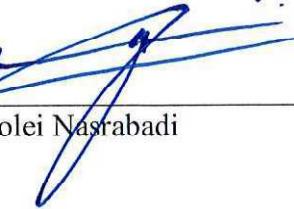
Nicolei Nasrabadi being duly sworn, deposes and says:

I am over 18 and not a party of this action. I am an Affidavit Documentation Specialist of Synchrony Bank formerly known as GE Capital Retail Bank. In that position I have access to creditor's books and records, and am aware of the process of the sale and assignment of electronically stored business records.

On or about 11/19/2014 Synchrony Bank formerly known as GE Capital Retail Bank sold a pool of charge-off accounts (the Accounts) by a Purchase and Sale Agreement and a Bill of Sale to Midland Funding LLC. As part of the sale of the Accounts, electronic records and other records were transferred on individual Accounts to the debt buyer. These records were kept in the ordinary course of business of Synchrony Bank formerly known as GE Capital Retail Bank.

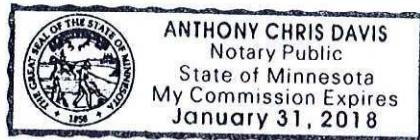
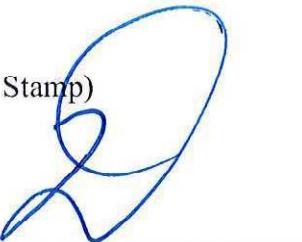
The Creditor has a process to detect and correct errors on these accounts. The above statements are true to the best of my knowledge.

Signed this 4<sup>th</sup> day of December, 2014

  
\_\_\_\_\_  
Nicolei Nasrabadi

Signed and sworn to before me this 4<sup>th</sup> day of December, 2014 by Tony Davis

(Notary Stamp)

**BLANKET CERTIFICATE OF CONFORMITY FOR NOTARY TONY DAVIS**

I, Brett Rouleau, an attorney-at-law admitted to practice in the State of Minnesota and fully acquainted with the laws of the State of Minnesota do hereby certify that I am duly qualified to make this certificate of conformity and that the acknowledgement or proof upon the affidavits of merit were taken by Notary Tony Davis, a notary public in the State of Minnesota, in the manner prescribed by the laws of the State of Minnesota and confirms to the laws thereof in all respects.

IN WITNESS WHEREOF, I have hereunto set my signature, on December 4, 2014.



Brett Rouleau  
Attorney at Law, State of Minnesota

# Exhibit 3

Field

Field Data

AccountNumber	4479931020398020
LastPurchaseDate	20130514
AccountAddress1	1871 55TH ST
City	BROOKLYN
State	NY
ZipCode	11204-1907
HomePhoneNumber	0000000000
WorkPhoneNumber	7188783319
BirthDate	19581128
ContarctDate	20080310
ChargeOffDate	20140126
LastPaymentDate	20130704
ChargeOffAmount	5264.25
AssociatedCost	0
AccruedInterest	2743.57
Sale Amount	8007.82
CustomerId	*****4877
FirstName	LEA
LastName	REICH
Maint_LastPaymentAmount	254

Data printed by Midland Credit Management, Inc. from electronic records provided by Synchrony Bank formerly known as GE Capital Retail Bank pursuant to the Bill of Sale / Assignment of Accounts transferred on or about 11/26/2014 in connection with the sale of accounts from Synchrony Bank formerly known as GE Capital Retail Bank to Midland Funding, LLC.

# Exhibit 4

## TURN SHOPPING INTO \$10 REWARD CARDS\*

When shopping, buying groceries, dining out, or traveling, reach for your Banana Republic Visa® Card. Every purchase gets you closer to earning a \$10 Reward Card, redeemable at all of our brands.



\*Please see your Reward Program Terms and Conditions for details.

See how fast your Rewards add up

	<b>\$150 = 750</b>
	x 5 POINTS
	<b>\$100 = 100</b>
	x 1 POINT
	<b>\$100 = 100</b>
	x 1 POINT
	<b>\$50 = 50</b>
	x 1 POINT
	<b>\$10 REWARD</b>
	FOR EVERY 1,000 POINTS EARNED

### BANANA REPUBLIC LUXE VISA® CARD

LEA REICH Account Number 4479 9310 2039 8020	Visit us at <a href="http://eservice.bananarepublic.com">eservice.bananarepublic.com</a> Customer Service: 1-866-450-2335
<b>Summary of Account Activity</b>	<b>Payment Information</b>
Previous Balance \$7,125.60	New Balance \$7,049.23
- Payments \$254.00	Amount Past Due \$245.00
+ Fees Charged <b>\$35.00</b>	Total Minimum Payment Due \$494.00
+ Interest Charged <b>\$142.63</b>	Payment Due Date 08/20/2013
<b>New Balance</b> <b>\$7,049.23</b>	
Credit Limit \$7,100.00	
Available Credit \$50.00	
Cash Limit \$1,184.00	
Available Cash \$50.00	
Statement Closing Date 07/28/2013	
Days in Billing Cycle 31	
New York residents may contact the New York state banking department to obtain a comparative listing of credit card rates, fees, and grace periods. New York State Banking Department 1-800-518-8866.	
<b>Rewards Summary</b>	<b>Account News</b>
Beginning Points Balance 922	Thank you for shopping with us. Each purchase leads to Rewards. Enjoy a \$10 Reward Card for every 1,000 points earned. You're 78 points away from your next Reward Card. Happy shopping!
Points Earned in Our Stores* 0	As one of our first cardholders, you're Luxe for Life. Enjoy the great benefits. They make for even happier shopping.
Total Points 922	
POINTS TO NEXT REWARD 78	
Rewards Earned This Year \$30.00	
<b>Transaction Summary</b>	
Tran Date Post Date Reference Number Description of Transaction or Credit Amount	
<b>*Purchases in Our Stores</b> (Gap, Old Navy, Banana Republic, Piperlime and Athleta)	
(Continued on next page)	

#### PAYMENT DUE BY 5 P.M. (ET) ON THE DUE DATE.

NOTICE: We may convert your payment into an electronic debit. See reverse for details, Billing Rights and other important information.

6544 BVH 1 7 25 130728 D PAGE 1 of 3 3179 1000 E403 O1PI6544

Detach and mail this portion with your check. Do not include any correspondence with your check.

BANANA REPUBLIC

Account Number: 4479 9310 2039 8020			
Total Minimum Payment Due	Past Due Amount	Payment Due Date	New Balance
\$494.00	\$245.00	08/20/2013	\$7,049.23

Payment Enclosed:  
Please use blue or black ink.  
OR pay on-line at  
[eservice.bananarepublic.com](http://eservice.bananarepublic.com)

\$

New address or email? Print changes on back.

We currently do not accept payments in our stores.

LEA REICH  
1871 55TH ST  
BROOKLYN NY 11204-1907

Make Payment To: BANANA REPUBLIC /GECRB  
PO BOX 960017  
ORLANDO, FL 32896-0017

Go Paperless. Get Rewarded.  
**Earn 500 bonus Reward points\***

Get your credit card statements online.  
It's fast, easy and good for the environment too.

Sign up for paperless statements today at:  
[ebill.bananarepublic.com](http://ebill.bananarepublic.com)



\*See your Rewards Terms and Conditions online at [bananarepublic.com/bananacard](http://bananarepublic.com/bananacard) for details.

<b>Transaction Summary (continued)</b>			
Tran Date	Post Date	Reference Number	Description of Transaction or Credit
<b>Other Transactions (gas, groceries, etc.)</b>			
07/04	07/04	74479945S00XS6H17	PHONE PYMT-THANK YOU ALPHARETTA GA (\$254.00)
<b>FEES</b>			
07/20	07/20		LATE FEE \$35.00
<b>TOTAL FEES FOR THIS PERIOD</b>			
<b>INTEREST CHARGED</b>			
07/28	07/28		INTEREST CHARGE ON PURCHASES \$142.63
07/28	07/28		INTEREST CHARGE ON CASH ADVANCES \$0.00
<b>TOTAL INTEREST FOR THIS PERIOD</b>			
<b>2013 Totals Year-To-Date</b>			
Total Fees Charged in 2013			\$210.00
Total Interest Charged in 2013			\$979.03
Total Interest Paid in 2013			\$185.73

<b>Interest Charge Calculation</b>					
Your <b>Annual Percentage Rate (APR)</b> is the annual interest rate on your account.					
Type of Balance	Expiration Date	Annual Percentage Rate	Balance Subject To Interest Rate	Interest Charge	
Purchases	N/A	23.99% (v)	\$6,999.85	\$142.63	
Cash Advances (v) = variable rate	N/A	25.99% (v)	\$0.00	\$0.00	

<b>Cardholder News and Information</b>					
Your account reflects an amount past due. If you are having difficulty making this payment, we have several temporary repayment options available to help make things easier for you. Call 1-888-248-3182 today to find out if you are eligible for one of our payment options.					

<b>Cardholder Benefits and Information</b>					
It's easier than ever to redeem your Rewards! Log into eService on your smartphone or your computer to access all your available Rewards and redeem them at your convenience! Never forget your Rewards again! Visit <a href="http://eService.bananarepublic.com">eService.bananarepublic.com</a> today!					

Visit us on Pinterest.com/BananaRepublic to see our most-loved styles.

Like us at Facebook.com/bananarepublic and follow us on Twitter and Pinterest for exclusive access to special offers, the latest style news and more.

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# **Exhibit 5**

**BANANA REPUBLIC**  
**LUXE VISA®CARD**

 LEA REICH  
 Account Number 4479 9310 2039 8020

 Visit us at [eservice.bananarepublic.com](http://eservice.bananarepublic.com)  
 Customer Service: 1-866-216-1886

<b>Summary of Account Activity</b>		<b>Payment Information</b>	
Previous Balance	\$7,972.82	New Balance	\$0.00
- Other Credits	\$8,007.82	Amount Past Due	\$0.00
<b>+ Fees Charged</b>	<b>\$35.00</b>	Total Minimum Payment Due	\$1,916.00
<b>New Balance</b>	<b>\$0.00</b>	Payment Due Date	01/28/2014
Credit Limit	\$7,100.00	<b>Late Payment Warning:</b> If we do not receive your minimum payment by the date listed above, you may have to pay a late fee up to \$35.00.	
Available Credit	\$0.00		
Cash Limit	\$1,184.00		
Available Cash	\$0.00		
Statement Closing Date	01/26/2014		
Days in Billing Cycle	30		
New York residents may contact the New York State Department of Financial Services by telephone or visit its website for free information on comparative credit card rates, fees and grace periods. NY State Dept of Financial Services: 1-877-226-5697 <a href="http://www.dfs.ny.gov/consumer/creditdebt.htm">http://www.dfs.ny.gov/consumer/creditdebt.htm</a>			
<b>Rewards Summary</b>		<b>Account News</b>	
Beginning Points Balance	922	Thank you for shopping with us. Each purchase leads to Rewards. Enjoy a \$10 Reward Card for every 1,000 points earned. You're 1,000 points away from your next Reward Card. Happy shopping!	
Points Earned in Our Stores*	0		
Total Points	0		
POINTS TO NEXT REWARD	1,000		
<b>Transaction Summary</b>			
Tran Date	Post Date	Reference Number	Description of Transaction or Credit
<b>*Purchases in Our Stores</b> (Gap, Old Navy, Banana Republic, Piperlime and Athleta)			
01/26	01/26	F317900DA00999990	CHARGE OFF ACCOUNT-PRINCIPALS
01/26	01/26	F317900DA00999990	CHARGE OFF ACCOUNT *FINANCE CHARGES*
<b>FEES</b>			
01/20	01/20		LATE FEE
<b>TOTAL FEES FOR THIS PERIOD</b>			
<b>INTEREST CHARGED</b>			
01/26	01/26		INTEREST CHARGE ON PURCHASES
01/26	01/26		INTEREST CHARGE ON CASH ADVANCES
<b>TOTAL INTEREST FOR THIS PERIOD</b>			
<b>2014 Totals Year-To-Date</b>			
Total Fees Charged in	2014		\$35.00
Total Interest Charged in	2014		\$0.00
Total Interest Paid in	2014		\$0.00

PAYMENT DUE BY 5 P.M. (ET) ON THE DUE DATE.

NOTICE: We may convert your payment into an electronic debit. See reverse for details, Billing Rights and other important information.

6544 BVH 1 3 25 140126 Z X PAGE 1 of 3 3179 1000 E403 O1PI6544

Detach and mail this portion with your check. Do not include any correspondence with your check.

**BANANA REPUBLIC**

Account Number: 4479 9310 2039 8020

Total Minimum Payment Due	Past Due Amount	Payment Due Date	Overlimit Amount	New Balance
\$1,916.00	\$0.00	01/28/2014	\$0.00	\$0.00

 Payment Enclosed:  
 Please use blue or black ink.  
 OR pay on-line at

 \$       

 We currently do not accept  
 payments in our stores.

New address or email? Print changes on back.

 LEA REICH  
 1871 55TH ST  
 BROOKLYN NY 11204-1907

 Make Payment To: BANANA REPUBLIC /GECRB  
 PO BOX 960017  
 ORLANDO, FL 32896-0017

Interest Charge Calculation					
Your Annual Percentage Rate (APR) is the annual interest rate on your account.					
Type of Balance	Expiration Date	Annual Percentage Rate	Balance Subject To Interest Rate	Interest Charge	
Purchases	N/A	23.99% (v)	\$0.00	\$0.00	
Cash Advances	N/A	25.99% (v)	\$0.00	\$0.00	
(v) = variable rate					

Cardholder News and Information					
Statement not provided to customer.					

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